

### § 12.3

### 7 CFR Subtitle A (1–1–08 Edition)

by the subject matter or the specific provisions of this part, have the meanings assigned to them in the regulations at part 718 of this title that govern reconstitutions of farms, allotments, and bases and any subsequent amendment thereto.

[61 FR 47025, Sept. 6, 1996; 61 FR 53491, Oct. 11, 1996]

#### § 12.3 Applicability.

(a) *Geographic scope.* The provisions of this part shall apply to all land, including Indian tribal land, in the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Island of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Federated States of Micronesia, the Republic of Palau, and the Republic of the Marshall Islands.

(b) *Effective date.* The provisions of this part apply to all actions taken after July 3, 1996, and to determinations made after or pending on July 3, 1996, except to the extent that § 12.5(a)(5) and 12.5 (b)(4) through (b)(8) specify retroactive application on December 23, 1985, and November 28, 1990, for certain actions and determinations regarding wetlands and converted wetlands. Actions taken and determinations made prior to July 3, 1996, are subject to regulations set forth in this part as of July 2, 1996, except as otherwise provided in this part. Further, to the extent that a person may be eligible for an exemption for an action taken before July 3, 1996, the action is subject to the provisions of this part.

#### § 12.4 Determination of ineligibility.

(a) *Actions.* Except as provided in § 12.5, a person shall be ineligible for all or a portion of USDA program benefits listed in this section if:

(1) The person produces an agricultural commodity on a field in which highly erodible land is predominant, or designates such a field for conservation use;

(2) The person produces an agricultural commodity on wetland that was converted after December 23, 1985; or

(3) After November 28, 1990, the person converts a wetland by draining, dredging, filling, leveling, removing woody vegetation, or other means for

the purpose, or to have the effect, of making the production of an agricultural commodity possible.

(b) *Highly erodible land.* A person determined to be ineligible under paragraph (a)(1) of this section may be ineligible for all program benefits listed in (d) and (e) of this section.

(c) *Wetland conservation.* A person determined to be ineligible under paragraph (a)(2) of this section shall be ineligible for all or a portion of the USDA program benefits listed in paragraph (d) of this section for which the person otherwise would have been eligible during the crop year of the commodity that was planted on the converted wetland. A person determined to be ineligible under paragraph (a)(3) of this section for the conversion of a wetland shall be ineligible for all or a portion of the USDA program benefits listed in paragraph (d) of this section for which the person otherwise would have been eligible during the crop year which is equal to the calendar year during which the violation occurred and each subsequent crop year until the converted wetland is restored or the loss of wetland functions and values have been mitigated prior to the beginning of such calendar year in accordance with § 12.5(b)(4)(i) (A) and (C) through (F) of this part. Ineligibility under paragraph (a)(2) or (a)(3) of this section may be reduced, in lieu of the loss of all benefits specified under paragraph (d) of this section for such crop year, based on the seriousness of the violation, as determined by the FSA Deputy Administrator for Farm Programs or designee upon recommendation by the FSA County Committee. Factors such as the information that was available to the affected person prior to the violation, previous land use patterns, the existence of previous wetland violations under this part or under other Federal, State, or local wetland provisions, the wetland functions and values affected, the recovery time for full mitigation of the wetland functions and values, and the impact that a reduction in payments would have on the person's ability to repay a USDA farm loan shall be considered to making this determination.

(d) *Programs subject to either highly erodible land or wetland conservation.*